

November 30, 1998

Carol Browner, Administrator
United States Environmental Protection Agency
Air and Radiation Docket and Information Center (6102)
401 M Street SW
Room M-1500
Washington, D.C. 20460

Attn: Docket A-98-12

Re: Comments on Proposed Rule; Federal
Implementation Plans to Reduce the
Regional Transport of Ozone

Dear Administrator Browner:

The State of Indiana is pleased to submit these comments on the USEPA's Proposed Rule, published on October 21, 1998, regarding federal implementation plans to reduce the regional transport of ozone. Many of the issues raised in this proposed rule are identical to those raised in USEPA's rule for regional reductions of nitrogen oxides, herein referred to as the "NO_x SIP Call." Indiana commented extensively during that rulemaking and incorporates those comments herein (Attachment A).

Indiana offers comments that emphasize three major concerns:

- ✓ USEPA's plan for imposing a federal implementation plan just two months after the states's submittal deadline makes any public input on the adequacy of a state's plan literally impossible. In the event that USEPA were to determine a state implementation plan inadequate, a federal implementation plan should not be finalized without an opportunity for further public comment;
- ✓ Consistent with concerns raised regarding the NO_x SIP Call, we do not believe that USEPA should, or even has the authority to, issue a federal implementation plan in order to achieve attainment of the 8-hour ozone

standard. This usurps the states' responsibility under the Clean Air Act to develop plans to meet clean air standards within their borders;

- ✓ Issuance of a federal implementation plan is not an appropriate resolution to the Section 126 petitions. Indiana is filing separate comments on a related rulemaking concerning the Section 126 petitions.

Development of a federal implementation plan

Indiana is disappointed that USEPA is proposing to issue a federal implementation plan without first allowing states a reasonable opportunity to comply with the NO_x SIP call. We believe that issuance of a federal implementation plan would further complicate the state implementation plan development process and would likely not result in air quality benefits any sooner than will be achieved by a state implementation plan revision. In fact, given that the Clean Air Act authorizes USEPA to impose specific sanctions when states fail to submit a required implementation plan, we feel that proposing to issue a federal implementation plan at this time is an unnecessary action, and usurps the states' primary authority under the Clean Air Act to develop plans to address air quality problems.

While Indiana understands USEPA's interest and commitment in ensuring that the air quality benefits of regional nitrogen oxide reductions are realized as soon as practicable, we believe that the proposed schedule for issuance of a federal implementation plan is inappropriate, especially given the short period of time states will be allowed to develop, adopt and submit state implementation plan revisions.

The proposed schedule does not acknowledge the complexities and timing issues faced by states in developing state implementation plan revisions necessary to comply with federal requirements. This concern is further complicated by the fact that USEPA has still not finalized each state's emissions budget, and will not do so until the next round of comments are submitted in late January or early February 1999. This further shortens the time available to states to complete a state implementation plan revision.

Should USEPA decide to proceed with its proposed schedule for issuing a federal implementation plan, we request that a state-specific federal implementation plan be developed and only after a state implementation plan has been formally disapproved. Issuance of a finding of failure to submit a required state implementation plan and promulgating a federal implementation plan are significant actions which we feel should be carefully considered and open to public review and input. The decision

to impose a federal plan in any state should be specifically proposed so that the public can provide comment.

A federal implementation plan should not be premised on the emission budget calculations used to establish the final NO_x SIP Call rule. Emission budgets included in a federal implementation plan should be established on a state-specific basis, and only after consideration of a variety of different ways to achieve NO_x emission reductions to minimize transport.

Relationship with the 8-hour ozone standard

Indiana does not agree with USEPA's coupling the issuance of a federal implementation plan with the interstate transport aspects of any state implementation plan revision necessary to address the 8-hour ozone standard. First, the purpose of the NO_x SIP Call is to address downwind attainment issues associated with the one-hour ozone standard. Second, it presupposes that states will not take necessary actions to address nonattainment issues with the 8-hour ozone standard. We find this connection especially interesting since USEPA is proposing to issue a federal implementation plan prior to official nonattainment designations for the 8-hour ozone standard which will occur in July 2000.

The federal implementation plan would also be imposed prior to the requirement for areas classified as "traditional" nonattainment to submit a state implementation plan revision. While the nitrogen oxides reductions will assist many areas in achieving attainment of the 8-hour ozone standard, the imposition of a federal implementation plan prior to the Clean Air Act specified state implementation plan revision dates appears to take attainment planning out of the control of the state jurisdictions. This will limit state flexibility in establishing measures necessary to assure attainment and maintenance of the 8-hour ozone standard.

Resolution of the Section 126 petitions

Indiana does not believe that issuance of a federal implementation plan is an appropriate resolution for the Section 126 petitions filed by states in the Northeast. Again, acknowledging that ozone is a widespread problem throughout the eastern half of the country and that transport occurs between states and from attainment to nonattainment areas within the same state, this process should not be driven by an urgency to provide relief to a select group of states. Indiana will be filing separate comments on a related rulemaking concerning the Section 126 petitions.

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In addition to the above concerns, Indiana offers comments on specific issues identified by USEPA in the proposed rule. These comments are included in Attachment B.

Indiana appreciates the opportunity to comment on this proposed rule and looks forward to your consideration of our comments.

Sincerely,

/ s /

John M. Hamilton
Commissioner

enclosures

cc: Steven Rothblatt, USEPA Region V
Joyce Martin

Attachment B - Indiana's Comments on Specific Issues Identified by USEPA in Proposed Rule; Federal Implementation Plans to Reduce the Regional Transport of Ozone

General Issues

In this area, USEPA specifically requests comment on:

4. Feasibility and cost effectiveness of control measures;
5. Projection of emissions reduction that various control measures would achieve

Comment - Indiana is currently evaluating implementation issues concerning the final NO_x SIP Call. This evaluation will include feasibility, cost-effectiveness of various control strategies, and projected emission reductions for each affected source sector. While earlier comments were provided in response to the proposed NO_x SIP Call and are included in Attachment A, it remains a difficult task to evaluate the impacts of the final federal rule, especially given that states still do not have access to all of the modeling information used by USEPA in developing the final rule. In addition, the type of issues that USEPA is raising cannot be completely evaluated in the short time frame between when the final NO_x SIP Call rule was published and these comments are due.

Indiana provides comments on the following specific issues identified by USEPA.

Federal NO_x Budget Trading Program (p. 56405)

Issue - Whether it is appropriate to use a common trading program for both the FIP and the Section 126 remedy, as well as for purposes of the NO_x SIP Call. If not, EPA requests specific comment on what should be different and why. (p. 56405)

Comment - As stated in Indiana's comment letter, we do not believe that it is appropriate to use a federal implementation plan as a means to resolve the section 126 petitions. An alternative remedy would be to allow states sufficient opportunity to develop a state implementation plan revision to address requirements of the NO_x SIP Call.

Issue - Whether additional stationary sources that are not included in the core applicability of the Federal NO_x trading Program, but emit to a stack and monitor NO_x ,

can opt into the program. (p. 56406)

Comment - States should have the flexibility to include in their trading programs all sources of NO_x where ascertaining and monitoring emission decreases can be carried out with reasonable certainty.

Issue - The Proposed Federal Trading Program (Part 97) would be virtually identical to the State NO_x Budget Trading Program in Part 96. EPA requests comment on whether any Part 97 provision should differ from corresponding provisions in Part 96. (P.56407)

Comment - Indiana believes that the elements of federal trading programs under Parts 96 and 97 should be the same. However states should retain the flexibility to tailor the federal trading programs to their specific needs.

Issue - Use of state-specific growth rates to determine new source set-asides. (p. 56410)

Comment - Indiana believes that it is appropriate that any determination on new source set-asides be decided on a state-specific basis and coordinated with the states. To the extent, that state-specific growth rates are available, they should be factored into this determination.

Issue - USEPA is proposing to use the same compliance supplement pools included in the final NO_x SIP Call. Comment is requested as to whether these allocations should be distributed by USEPA to the sources or the states and then the states would then distribute. (p. 56414)

Comment - Indiana believes that it is appropriate for USEPA to distribute compliance supplement pools to the states and then the states would distribute the allocations. The states have more expertise and knowledge of sources within their jurisdictions and are better able to make the determination on appropriate allocations. In addition, states will be ultimately, through Title V, responsible for assuring compliance.

Issue - If USEPA retains responsibility for distributing the compliance supplement pools, comment is requested on whether this distribution should be only for early reductions. Under this option, scenarios where there are more valid requests than allowances in the state's pool are described and where there are less valid requests than allowances in the state's pool. In the latter case, USEPA proposes to issue allowance credits for valid requests and then retire the remaining credits. Comment is solicited on this option including the methodology for calculating early reduction credits, and how to integrate the approach with the OTC program. (p. 56414)

Comment - Indiana requests that any scenario involving USEPA distributing allowances be coordinated with the state. While some allowances should be allocated for early reduction, there should be allowances available to address valid compliance-related issues. In a scenario where there are less valid requests than allowances, we would encourage USEPA to assign those allowances to the state in order to provide maximum flexibility for growth.

Issue - USEPA proposes a second scenario if they were to retain responsibility for distributing the compliance supplement pools. Under this scenario, part of the allowances would be distributed for early reductions and the remainder made available to sources that demonstrate a need for the compliance supplement. A methodology for distributing credits is laid out. Specifically, USEPA is seeking comment on the option, the number of credits to be reserved for direct distribution, the methodology for direct distribution, and options for public review of the direct distribution. USEPA is also seeking comment on the appropriate administrator of the direct distribution. (p. 56414)

Comment - Because of the uncertainty on how appropriate allocations will be determined as part of the development of a state implementation plan revision in response to the NO_x SIP Call, Indiana is unable to comment on this issue at this time. However, we would encourage USEPA to allow affected states an opportunity to provide additional comment at a later time when the issue has been more clearly evaluated. The determination requested is one that can only be made after sufficient discussion and debate at the state level involving the public and other stakeholders.

Non-Trading Sources Emissions Limits (p. 56415)

Issue - USEPA invites comments on approaches to craft the FIP rules in a manner that, to the extent possible, matches the format of state and local regulations and minimizes conflict between the federal requirements and the current or proposed state requirements.

Comment - Indiana believes that it will be important that USEPA recognize the significant effort states make in developing state implementation plan revisions and carefully consider progress made before issuing a federal implementation plan. It is extremely important that the public and other stakeholders have input into the development of rules that affect them. The proposal of a federal implementation plan should not be used as a mechanism to diminish state flexibility in developing a state implementation plan to meet the needs of its citizens. Indiana is concerned that the possibility exists that the public may be involved in the process at the state level only to have their input disregarded upon the issuance of a federal implementation plan.

Issue - USEPA invites comments on alternative approaches to monitoring emissions,

including CEMS. Specifically, they are looking for input on the use of predictive emissions monitoring systems (PEMS).

Comment - Indiana encourages USEPA to explore data availability and quality issues and to issue guidance before a decision be made on alternative approaches to monitoring emissions, including the use of predictive emissions monitoring systems. Indiana requests that USEPA reserve the right for states to provide comment on this issue after additional information become available.